# EXHIBIT B

**UNITED STATES DEPARTMENT OF COMMERCE**
**Patent and Trademark Office**
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| SERIAL NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
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| 09/001,032 | 12/30/97 | RAYMOND S | B00337700101 |

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| EXAMINER | |
|---|---|
| GETZOW, S | |
| ART UNIT | PAPER NUMBER |
| 3737 | 3 |

DATE MAILED: 09/29/98

**Please find below a communication from the EXAMINER in charge of this application.**

Commissioner of Patents

DOCKETED
OCT 8 1998
KUDIRKA & JOBSE, LLP
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PHT 000493

PTOL-90 (Rev. 6/84)

2 - APPLICANTS COPY

| Office Action Summary | Application No. 09/001,032 | Applicant(s) Raymond et al |
|---|---|---|
| | Examiner Scott M. Getzow | Group Art Unit 3737 |

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

**Disposition of Claims**

☒ Claim(s) 1-34 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-34 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

**Application Papers**

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

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*— SEE OFFICE ACTION ON THE FOLLOWING PAGES —*

***Claim Rejections - 35 USC § 112***

1. Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Method claim 33 depends from apparatus claim 24. This situation renders claim 33 indefinite.

***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-10,20-23,26-31,34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 5,778,882. Although the conflicting claims are not identical, they are not patentably distinct

from each other because they are considered to be an obvious broadening of the claims of the parent patent.

4. Claims 11-19,24,25,32,33 are rejected under the judicially created doctrine of double patenting over claims 1-17 of U. S. Patent No. 5,778,882 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: the addition of a strap is fully disclosed in the parent patent. Further, since the term 'comprising' does not limit the claims of the present application to the subject matter explicitly stated therein, but also includes subject matter disclosed, but not claimed, in the specification, the claims of the parent patent are considered to include the strap, although not explicitly claimed. Therefore, allowance of the present claims, which call for the addition of a strap, would impermissibly extend applicants' coverage.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-9,20,26-31,34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fang et al '552.

Fang teaches a health monitor which stores various signals from multiple sensors. The device also allows for the collection of the patient's 'psychological' condition, (column 1, lines 65+). Further, the term 'intermittent' is considered to be obvious over the teachings of Fang since Fang sets forth in column 8 means for shutting down part of the monitor in order to save battery energy. Also, the word ;portable' has a very broad meaning. Still further, to provide a time base, as set forth in applicant's claims, is considered to have been obvious over Fang since the data recorded in Fang would be nonsensical if it were not orderly produced and stored relative to some time frame.

7. Claims 11,13-16,19,24,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xu et al ('Multichannel Ambulatory Monitoring of Circulation Related Biosignals').

Xu teaches a device which monitors and stores data from a variety of sensors. To have a time base would have been obvious to use with Xu for reasons mentioned supra. Further, the strap of

Xu, shown in figure 3, would have been obvious to modify to enable all of the electrodes to fit on in order to detect ECG and respiration, for example, in light of the other art cited which show electrodes located on a strap.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Getzow whose telephone number is (703) 308-2997.

smg

September 28, 1998

PHT 000498